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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,111	02/19/2004	Craig Coons	23-0667	5376

40158 7590 07/08/2004

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3500 SOUTH FIRST AVENUE CIRCLE
SUITE 250
SIOUX FALLS, SD 57105

EXAMINER

FRANCIS, FAYE

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,111

Applicant(s)

COONS, CRAIG

Examiner

Faye Francis

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/19/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

OP

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipate by Billings et al, hereinafter Billings.

Billings discloses in Figs 1-12, a noise-generating device 10 comprising a housing member [12 and 14], an actuation assembly [switch sections defined by keypad 20], a speaker 24, a handle portion [shield member 22], a neck portion [cap 18] extending outwardly from the handle portion, a power supply [battery], a cover [door 56] and a grill member 108.

Since the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions.

3. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sikes.

Sikes discloses in Figs 2-4, a noise-generating device [ear insert 24] comprising a housing member 26, an actuation assembly [on/off switch 30], a speaker 38, a handle portion [any part of the housing 26], a neck portion [area between housing 26 and speaker housing 36] extending outwardly from the handle portion, a power supply [battery] and a cover [housing plate 44].

Since the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions.

4. Claims 1-2 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 6132623, hereinafter JP'623.

JP'623 discloses in Figs 1-2, a noise-generating device [radio] comprising a housing member [1 and 2], an actuation assembly [switch 11], a handle portion [cap 1] a neck portion [body 2] extending outwardly from the handle portion, a power supply [battery] and a cover [cap 5].

Also as required by claim 1 the noise-generating device of the JP'623 is considered to be inherently has a battery in as much as the device as disclosed is a radio.

Since the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sikes in view of Smith et al, hereinafter Smith.

Sikes discloses most of the elements of this claim but for the neck portion comprising a resiliently flexible material.

Smith discloses that it is well known to provide a flexible ear insert audio device [see the abstract]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the neck portion in the device of Sikes to be flexible as taught by Smith in order to comfortably carried in the ear of a wearer.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sikes in view of Shields.

Sikes discloses most of the elements of this claim but for the timer assembly [subsection [0008]].

Shields teaches the concept of providing an ear insert audio device [last line in the subsection [0008]] with a timer. It would have been obvious to provided the device of Sikes with the timer assembly as taught by Shields in order to preset the alarm with a predetermined amount of time that counts down and sound an alert tone when completed.

Allowable Subject Matter

8. Claim 12 is allowed.

Conclusion

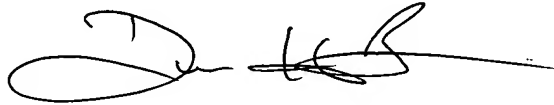
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 703-306-5941. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3712

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



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